of the Court of Appeals of Georgia may be reversed by this court, and that petitioner may have such other and further relief or remedy in the premises as this Honorable Court may deem appropriate.

Respectfully submitted

A. T. Walden
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Attorneys for William Bunn,
Petitioner

BRIEF OF AUTHORITIES ON BEHALF OF THE PETITIONER:

The fundamental questions raised by this petition are:

I.

Is a Municipality, in making ordinances regulating the conduct of the business of operating motor vehicles for hire, bound by any rule of reason in making the ordinances?

From this question, if it be decided that they are so bound, flows the subsidiary question: Is an ordinance prohibiting Negro carriers from transporting white people for hire in a city in which two-thirds of the population is white so unreasonable a regulation

that it deprives petitioner of his constitutional rights?

The Supreme Court of Georgia has held that the case of *Schlesinger vs. City of Atlanta*, 161 Ga., 148,, is controlling in this case, and that case holds that:

"Individuals do not have the inherent right to conduct their private businesses in the streets of a city, and the State or City can prohibit the owners or operators of jitneys and busses from transporting passengers for hire in such vehicles upon the streets of a city."

And in the present case *Bunn vs. City of Atlanta*, 19 S. E. 2nd. 554 the court has held:

"If a city sees fit to grant permission to individuals to operate taxicabs or busses on its streets, it can prescribe such conditions as it may see fit, and individuals desiring to avail themselves of such permission must comply with such conditions whether reasonable or unreasonable.

A city ordinance requiring that taxicabs or automobiles for hire should bear a sign that the vehicle is for white passengers only or for colored passengers only and providing that no taxicabs shall be used to carry both white and Negro passengers, but

shall serve one race exclusively, does not deny "equal protection of law" or "due process of law." *Const. Ga. Art.* 1, Section 1, par. 2; U. S. C. A. Const. Amend. 14."

These decisions are directly against the principle of law laid down in *Buchanan vs. Warley*, 245, U. S. 81 where the court held:

"We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the state, and is in direct violation of the fundamental law enacted in the 14th Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case, the ordinance cannot stand. Booth vs. Illinois, 184 U. S. 425, 429, 46 L. ed. 623, 626, 22 Sup. Ct. Rep. 25; Otis v. Parker, 187 U. S. 606, 47 L. ed. 323, 327, 23 Sup. Ct. Rep. 168,"—and in headnote 4 of this case where the court held:

"A city ordinance which prevents the occupancy of a lot by a colored person in a block where a majority of the residences are occupied by white persons, thereby preventing white persons in such block from selling property therein to Negroes for residence purposes, is not a legitimate exercise of the police power of the state."

II.

The second question presented for determination is:

Is an ordinance prohibiting Negro operators of taxicabs and autos for hire from carrying white and Negro passengers in the same vehicle, and restricting

the use of any single vehicle to a single race, to the exclusion of the other race, a violation of the constitutional rights of a Negro operator of such a vehicle under that section of the constitution of the State of Georgia which provides that "Protection to person and property is the paramount duty of government and shall be impartial and complete?"

The answer to this is contained in the decision of the Supreme Court of Georgia in the case of *Chaires vs. City of Atlanta*, 164 Ga. 755, where the court held:

"The court did not err in enjoining the enforcement of so much of section 1 of the ordinance as prohibits colored barbers "from serving as barbers (white) children under the age of 14 years." This section is void, being in violation of those sections of the State and Federal constitutions which guarantee equal protection of the laws, inviolability of property rights, and due process of laws."

III.

Is the ordinance complained of in violation of the 14th Amendment to the Constitution of the United States, in that it would deprive the petitioner of a property right without due process of law?

If we follow the decision in the case of *Buchanan vs. Warley* set forth above, it is, and we may note that in the case of *Chaires vs. City of Atlanta*, 164 Ga. 767, the court said:

"In the case of *Coppage v. Kansas*, 236 U. S. 1 (35 Sup. Ct. 240, 59 L. Ed. 431, L. R. A. 1915C, 960), the Supreme Court of the United States used this language: "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

And in the case of *Butcher's Union etc. v. Crescent City etc.*, 111 U. S. 746, the court said:

"The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; and among these are life, liberty, and the pursuit of happiness. This right is a large ingredient in the civil liberty of the citizen. Again, on page 764 (589), the learned justice said: "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." And again, on page 765 (590): "But if it does abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does de-

prive him, to a certain extent, of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers; which as already intimated, is a material part of the liberty of the citizen."

Petitioner has been denied his rights under the Constitution of the United States and under the Constitution of the State of Georgia as set forth above and a substantial Federal question has thus been raised.

Respectfully submitted,

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Petitioner